

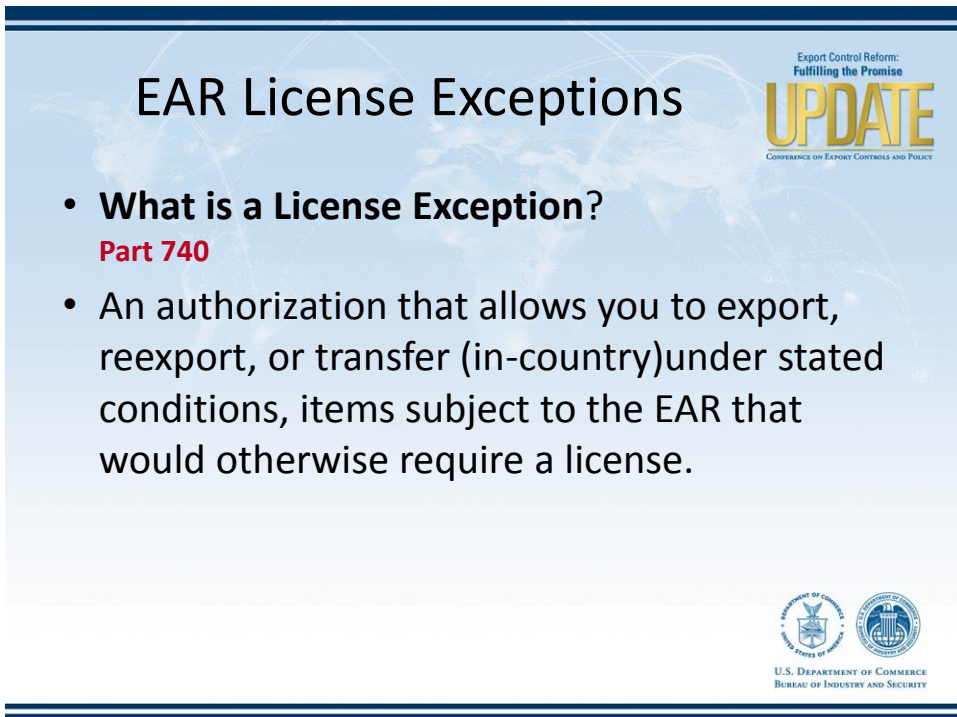


Export Control Reform:  
Fulfilling the Promise  
**UPDATE**  
CONFERENCE ON EXPORT CONTROLS AND POLICY

# Export Control Reform and License Exceptions

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BUREAU OF INDUSTRY AND SECURITY



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## EAR License Exceptions

- **What is a License Exception?**  
**Part 740**
- An authorization that allows you to export, reexport, or transfer (in-country) under stated conditions, items subject to the EAR that would otherwise require a license.

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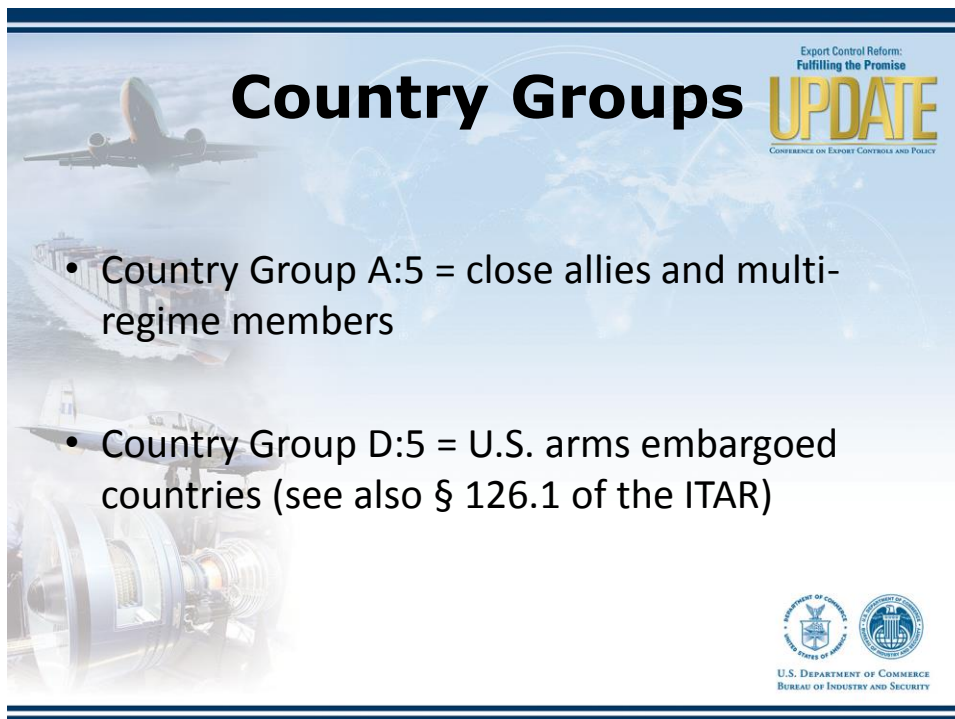
# Country Groups

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## Supplement 1 to Part 740

- Group A: Regime Members
- Group B: Less Restricted
- Group D: Countries of Concern
- Group E: Terrorist Supporting

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# Country Groups

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- Country Group A:5 = close allies and multi-regime members
- Country Group D:5 = U.S. arms embargoed countries (see also § 126.1 of the ITAR)

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## Authorization for Items Moving from USML to CCL: EAR License Exceptions



- Restrictions on use of License Exceptions for 600 series
  - May only use those license exceptions listed in § 740.2(a)(13)
  - Country Group D:5 (except § 740.11(b)(2) of GOV)
  - Major Defense Equipment sold under a contract exceeding certain values
  - Other applicable restrictions in § 740.2 (e.g., MT-controlled items) or specific section of applicable license exception



## License Exceptions for 600 series



Available license exceptions listed in §740.2(a)(13):

- LVS (§ 740.3)
- TMP (§ 740.9)
- RPL (§ 740.10)
- GOV (§ 740.11)
- TSU (§ 740.13)
- STA (§ 740.20)



## LVS – Limited Value Shipments (§740.3)



- Single shipment must not exceed value limit in ECCN – no splitting orders or shipments, etc.
- May not exceed 12 times LVS limit to same consignee per year
- Group B (countries not of NS concern) – 600 series can't go to D:5 per §740.2 restrictions
- Corresponds to ITAR §123.16(b)(2)



## TMP- Temporary Exports (§740.9)



- Temporary exports to a U.S. person's foreign subsidiary, affiliate, or facility abroad would no longer be limited to exports to Country Group B (corresponds to ITAR §123.16(b)(9))
- Temporary export term still one year
- When authorization to retain the item abroad beyond one year is requested, the term of the authorization may be for a total of four years (versus the current additional six months)



## TMP- Temporary Exports (§740.9)



- For items temporarily in the U.S., new note specifies that shipments originating in Canada or Mexico that incidentally transit the U.S. en route to delivery points in the same country do not need a license (corresponds to ITAR §123.19)



## RPL – Repair & Replacement (§740.10)



- One for one replacement of parts, servicing, replacement of defective equipment
- Equipment must be lawfully exported
- Original capability may not be enhanced
- Revisions allow repairs of ITAR items using 600 series parts and components, return of 600 series item serviced or replaced





## RPL – Repair & Replacement (§740.10)



- RPL does not authorize exports of ITAR items
- No temporary import license required for 600 series items



## GOV – Governments (§740.11)



- Provisions for IAEA, CWC inspections, and ISS streamlined but not substantively changed
- Supplement to section removed
- USG and cooperating governments split into separate paragraphs



## GOV – Governments (§740.11)



- New definition for “contractor support personnel” that are to be treated as USG personnel
- New authorization for shipments by or on behalf of USG – generally requires written authorization from head of responsible agency – reflects DDTC draft
- New authorization for DOD-directed shipments (corresponds to ITAR §§ 125.4(b)(1), 125.4(b)(3), and 126.6(a))



## TSU – Technology and Software Unrestricted (§740.13)



- Various technology and software, including minimum necessary for operation of lawfully exported items
- Allows technology to certain employees of universities in U.S. (corresponds to ITAR §125.4(b)(10))
- Allows copies of technology previously authorized to same recipient (corresponds to ITAR §125.4(b)(4))



## STA – Strategic Trade Authorization (§740.20)



- License Exception STA: requirements for all items subject to the EAR
  - ECCN must authorize
  - All reasons for control that apply to the transaction must be authorized to use STA
    - NS, CB, NP, RS, CC, SI: Country Group A:5 (§ 740.20(c)(1))
      - Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, and United Kingdom
    - NS only: Country Group A:6 (§ 740.20(c)(2)) [NOT available for 600 series items]
      - Albania, Hong Kong, India, Israel, Malta, Singapore, South Africa, & Taiwan



## STA – Strategic Trade Authorization (§740.20)

- Process for all items subject to the EAR:
  1. Provide consignee with ECCN
  2. Obtain consignee statement
  3. Notify consignee that shipment (or specific items within a shipment) is (are) under STA
  4. Keep record showing which shipments belong to each consignee statement
- Consignee statement – five points:
  - Aware that items are to be shipped under STA.
  - Been informed of ECCN by \_\_\_\_\_.
  - No subsequent License Exception APR (a) or (b) shipments.
  - Agrees not to ship or transfer in violation of EAR.
  - Agrees to provide documents to USG upon request.





## STA: Additional Requirements for 600 Series Items Only

- Purchaser, intermediate consignee, ultimate consignee and end user must all have been approved on a license issued by BIS or the Directorate of Defense Trade Controls
  - The approved license does not need to be for the items intended to be shipped under STA
- No 600 series “Major Defense Equipment” and the value of such items in contract requiring export exceeds \$25,000,000



## STA: Additional Requirements for 600 Series Items Only

- 9A610.a (aircraft end-items) – No STA unless the item is determined by BIS to be eligible
- 8A609.a (surface vessels), 8A620.a or .b (submersible vessels) – No STA unless the item is determined by BIS to be eligible
- Submit requests via SNAP-R – 78 FR 22719
- Information to be included – 78 FR 22725



## STA: Additional Requirements for 600 Series Items Only

- Consignee must be in a country listed in Country Group A:5
- If a natural person, consignee must be a national of a country listed in Country Group A:5



## STA: Additional Requirements for 600 Series Items Only

- Ultimate end-user must be a specified agency of a government in Country Group A:5; or
- Item must be for development, production, installation, maintenance, repair, overhaul or refurbishing of an item in A:5 or U.S. and ultimately will be used by such government agencies or U.S. government or person in the United States; or



## STA: Additional Requirements for 600 Series Items Only

- The United States Government has otherwise authorized the ultimate end use, the license or other authorization is in effect, and the consignee verifies in writing that they have such authorization and provides the license or other approval identifier to the exporter, reexporter or transferor (as applicable)



## STA: Additional Requirements for 600 Series Items Only

- Some 9D610 (aircraft) and 9D619 (gas turbine engines) software precluded
- Some 9E610 (aircraft) and 9E619 (gas turbine engines) technology limited to “build to print”



## STA: Additional Requirements for 600 Series Items Only

- Adds two points (vi) and (vii) to consignee statement
  - In addition to existing five points
- Point (vi) required of all consignees
- Point (vii) required of non-governmental consignees



## STA: Additional Requirements for 600 Series Items Only

- (vi) Understands that STA may be used to export to persons in Country Group A:5. Natural persons must also be nationals of a country in Country Group A:5
- Ultimate end-user must be a specified agency of a government in Country Group A:5; or
- Item must be for development, production, installation, maintenance, repair, overhaul or refurbishing of an item in A:5 or U.S. and ultimately will be used by such government agencies or U.S. government or person in the United States; or





## STA: Additional Requirements for 600 Series Items Only

- The United States Government has otherwise authorized the ultimate end use, the license or other authorization is in effect, and the consignee verifies in writing that they have such authorization and provides the license or other approval identifier to the exporter, reexporter or transferor (as applicable)
- (vii) Agrees to permit U.S. Government end-use check.



## Export Clearance

### Automated Export System

- Enter the three-letter code into AES + ECCN
- All exports of 600 series items (except .y items) require AES filing, regardless of value or destination
- All exports authorized under STA require AES filing (effective October 15, 2013)



## Summary License Exceptions



- Make sure your transaction requires a license (i.e., there is an “X” in the box), before reviewing the License Exceptions
- Before going to a specific license exception, make sure there are no restrictions
- Each exception is unique; make sure you meet of all of the criteria



## Contacts



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